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FISCAL IMPACT STATEMENT

LS 6191

BILL NUMBER: SB 78

NOTE PREPARED: Feb 26, 2008

BILL AMENDED: Feb 25, 2008

SUBJECT: Probate and Trust Matters.

FIRST AUTHOR: Sen. Zakas

FIRST SPONSOR: Rep. VanHaaften

BILL STATUS: As Passed House

FUNDS AFFECTED: X GENERAL
X DEDICATED
FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Property Tax Benefits for Trusts:* The bill specifies that a qualified personal residence trust is entitled to certain property tax deductions and the homestead credit during the period in which the grantor of the trust is entitled to occupy the residence rent free under the terms of the trust and is otherwise eligible for the deduction or credit. The bill also permits more than one dwelling on property held by a trust to receive a homestead credit if each dwelling is used by the grantor of the trust or a beneficiary of the trust.

Access to Safe Deposit Boxes: The bill establishes procedures for obtaining access to a safe deposit box following the death of the individual leasing the safe deposit box.

Delegation of Powers by Parent or Guardian: The bill extends to 12 months the period for which a parent of a minor or a guardian of a protected person can delegate by properly executing a power of attorney certain powers concerning the support, custody, or property of the minor or protected person. It also removes the requirement that the parent or guardian be incapacitated or absent during the period in which the delegated powers are conferred upon the attorney in fact.

Abatement of Beneficiary Interests: The bill specifies the order in which beneficiary interests in a trust must be abated if the trust property is insufficient to fully satisfy the interests of all beneficiaries.

Power of Attorney Requirements: The bill permits a power of attorney to be signed at the principal's direction. (Current law requires a power of attorney to be signed by the principal to be valid.) It also provides that if a power of attorney is signed at the direction of the principal, the notary must state that the individual who signed the power of attorney did so at the principal's direction.

Parent's Intestate Share of Child's Estate: The bill provides that if a parent was convicted of causing the death of the other parent by murder, voluntary manslaughter, or another criminal act, and the death does not result from the operation of a vehicle, the parent may not receive: (1) an intestate share of the child's estate; or (2) a refund of unused accident and sickness insurance premiums upon the death of the insured child, if the child paid the insurance premiums.

(The introduced version of this bill was prepared by the Probate Code Study Commission.)

Effective Date: Upon passage; July 1, 2008.

Explanation of State Expenditures: (Revised) *Property Tax Benefits for Trusts* - The bill could potentially lead to additional homestead credits being paid for: (1) homesteads which have been transferred to a qualified personal residence trust; and (2) certain homesteads located on property containing another homestead that is owned by a trust. However, the total amount of additional homestead credits that may be paid as a result of this bill is indeterminable.

The bill provides that a trust is entitled to the homestead credit for real property it owns, provided the property is occupied by an individual and the county auditor determines that the individual: (1) has a right to occupy the real property rent-free under the terms of a qualified personal residence trust created by the individual under U.S. Treasury regulations; (2) otherwise qualifies for the deductions; and (3) would be considered the owner of the property under the property tax law. The bill also provides that more than one dwelling on property held by a trust is entitled to receive the homestead credit if each dwelling is used by the grantor of the trust or a beneficiary of the trust.

Homestead credits are paid by the state in the amount of 20% of the net property tax due for qualifying funds on owner-occupied residences. If, under this bill, additional taxpayers claim the homestead credit, PTRC rates would be reduced.

Explanation of State Revenues: *Property Tax Benefits for Trusts* - The state levies a small tax rate for the State Fair and State Forestry that applies to all assessed value (AV). If property is not a part of the tax base, the state cannot assess this tax on the property. Any decrease in the AV base resulting from additional aged, blind/disabled, and veterans deductions granted due to this bill would decrease the property tax revenue for these two funds. However, the potential revenue loss due to the bill is indeterminable.

Access to Safe Deposit Boxes - The bill could potentially result in additional court fees to the state General Fund, the Judicial Branch Insurance Adjustment Account, and the State User Fee Fund. However, the extent of this impact is indeterminable and would depend on the additional court actions occurring as a result of requests for access to a decedent's safe deposit box.

The bill provides that a financial institution is liable to a decedent's estate or to an individual entitled to access the decedent's safe deposit box under the provisions of the bill, if the financial institution: (1) is presented with a request for access by the authorized individual; and (2) refuses to allow access to the safe deposit box within three business days of being presented with an appropriate request for access. However,

if the financial institution requires a locksmith or other contractor to gain access to the safe deposit box, the bill provides the financial institution five additional business days to comply with the access requirements.

A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the revenue from the judicial salaries fee (\$17), the public defense administration fee (\$3), and the court administration fee (\$3) is distributed to the state General Fund. Also, the judicial insurance adjustment fee (\$1) is distributed to the Judicial Branch Insurance Adjustment Account, and the automated record keeping fee (\$7) is distributed to the State User Fee Fund.

Parent's Intestate Share of Child's Estate - The bill would affect very few intestate distributions in the future. Thus, any annual fiscal impact from the bill is likely to be minimal. Any revenue impact the bill might have would arise from the change in the distribution of the intestate share from the parent of a child to the child's sibling(s), other relatives, or other unrelated beneficiaries who would have a lower exemption value and a higher average tax rate than the parent would have under the Inheritance Tax.

Explanation of Local Expenditures: (Revised) *Property Tax Benefits for Trusts* - As of January 1, 2008, 52 counties provide additional Homestead credits that are paid with proceeds from a combination of county adjusted income taxes (CAGIT), county option income taxes (COIT), and county economic development income taxes (CEDIT). This includes traditional COIT-funded homestead credits, CEDIT-funded credits to mitigate inventory shifts, and credits from the new LOIT options available beginning in 2008.

The potential increase in homestead credits under this proposal would:

1. Increase the cost of COIT-funded homestead credits, thereby reducing the amount of COIT that would be available as certified shares;
2. Increase the cost of CEDIT-funded homestead credits which could result in an increased CEDIT tax rate; and
3. Reduce the percentage of net levies that would be replaced by the new "LOIT #2" credits.

Explanation of Local Revenues: (Revised) *Property Tax Benefits for Trusts* - The bill could potentially lead to additional aged, blind/disabled, and veterans deductions and additional standard deductions being granted to homesteads transferred to qualified personal residence trusts or certain homesteads located on trust property. However, the total amount of these additional deductions is indeterminable. The additional deductions would serve to shift part of the property tax burden from the taxpayers receiving the deduction to all taxpayers in the form of an increased tax rate.

The bill provides that a trust is entitled to the aged, blind/disabled, and veterans property tax deductions for real property it owns, provided the property is occupied by an individual and the county auditor determines that the individual: (1) has a right to occupy the real property rent-free under the terms of a qualified personal residence trust created by the individual under U.S. Treasury regulations; (2) otherwise qualifies for the deductions; and (3) would be considered the owner of the property under the property tax law. The bill also provides that such homesteads are entitled to the homestead credit which automatically qualifies the homestead for the standard deduction.

The bill also provides that more than one dwelling on property held by a trust is entitled to receive the homestead credit if each dwelling is used by the grantor of the trust or a beneficiary of the trust. These homesteads would also automatically qualify for the standard deduction.

Access to Safe Deposit Boxes - The bill could potentially result in additional court fees to local governments. However, the extent of this impact is indeterminable and would depend on the additional court actions occurring as a result of requests for access to a decedent's safe deposit box.

If additional civil actions result from the bill, local governments receive revenue from the following sources. The county general fund receives 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the revenue from the civil costs fee. If the case is filed in a city or town court, 20% of the revenue from the civil costs fee is deposited in the county general fund and 25% is deposited in the city or town general fund. In addition, the document storage fee (\$2) is distributed to the Clerk's Record Perpetuation Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Parent's Intestate Share of Child's Estate - See *Explanation of State Revenues*.

State Agencies Affected: Department of Local Government Finance.

Local Agencies Affected: Trial courts; Counties, cities, and towns; County auditors.

Information Sources:

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